



Joint Legislative Commission on Governmental Operations

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State Budget Director
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Summary

Timeline

- Contracts first signed in 1999 (Hunt administration)
- Current contract signed in 2011 (Perdue administration)
- Extended December 2014 for one year. All contracts expire December 31, 2015

Methodology and analysis

- May 2014 DPS report is not a complete cost-benefit analysis
 - Internal costs not fully captured
 - Less accurate square footage calculation
- Comparing contracts to internal costs on an “apples-to-apples” basis is difficult
 - Agencies underestimate internal costs
- State does not have standard methodology

Contract extension

- Concur with legislative attorneys and fiscal staff that report to Gov Ops was not required before extending contract
- Handled in proper and ethical manner

Summary timeline

**Jul. 1999 -
Jun. 2002**
Pilot project at
Albemarle

Sept. 2007
Tabor added to
contract

May 2014
DPS report to
legislature

**Nov. - Dec.
2014**
OSBM Director
meets separately
with DPS and vendor

Apr. 2015
Contract extended
for Tabor through
Dec. 2015

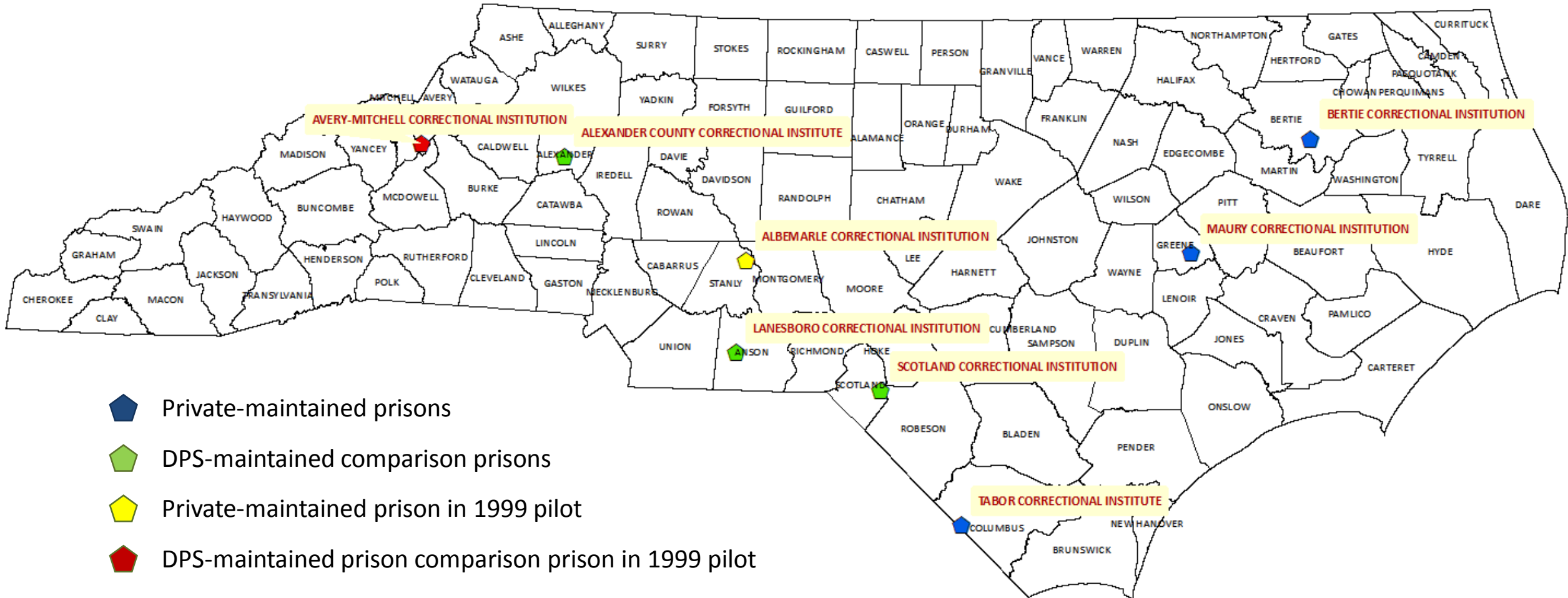
**Jan. 2006-
Dec. 2011**
Contract term for
RFP issued and
competitively
awarded for Bertie
and Maury

**Jan. 2012-
Dec. 2014**
Contract term for
RFP issued and
competitively
awarded for Bertie,
Maury and Tabor

Oct. 2014
Meeting with DPS
and vendor

Dec. 2014
Contract extended
for Bertie and
Maury through Dec.
2015

Location of prisons



Detailed timeline: 1999-2007

**Jul. 1999 –
Jun. 2002:**

- Pilot project for private maintenance at Albemarle CI (Stanly County); comparison with state maintenance at Avery-Mitchell CI.

Jan. 2006:

- Contract for private maintenance at Bertie and Maury CIs begins. Contract awarded to vendor through competitive bid process (Initial 2-year term with three 1-year option years).

Sept. 2007:

- Tabor CI added to vendor's existing contract via contract amendment.

Detailed timeline: 2010-2011

May 2010:

- Budget Reform and Accountability Commission (BRAC) recommends rebidding the current contracts plus, at a minimum, three similar state-maintained facilities and expanding private maintenance to additional prisons if savings targets are reached. (DPS provided FY08-09 cost comparison data to BRAC.)

Jun. 2010:

- The Appropriations Act of 2010 (S.L. 2010-31) is ratified. The final Conference version includes a provision prohibiting new contracts for prison maintenance. Renewals of existing contracts are authorized. (The provision was not included in the Senate or House versions.)

Jul. 2011:

- DPS issues RFP for renewal of existing prison maintenance contracts.

Detailed timeline: 2011

Fall 2011:

- Sections 1.1 and 1.2 of S.L. 2011-412 require DPS to study the potential benefits and costs of contracting for maintenance services at prison facilities and report its findings to the 2013 Session of the General Assembly. DPS prohibited from expanding private maintenance contracts to additional prison facilities unless authorized by the 2013 Session of the NCGA.

Dec. 31, 2011:

- End date in contract for maintenance at Bertie and Maury. (End date for Tabor is April 30, 2012.)

Detailed timeline: 2012-2014

Jan. 2012:

- New contract begins. Contract awarded in fall 2011 to vendor through competitive bid process for Bertie, Maury and Tabor CIs. Initial 2-year term with one 1-year option. P&C approval authorizes additional renewal years with justification. Term for Bertie and Maury is Jan. 1, 2012 – Dec. 31, 2014. Term for Tabor is May 1, 2012 - Apr. 30, 2015.

Jan. 2013:

- Governor McCrory takes office.

May 2014:

- DPS submits report on privatized prison maintenance required by S.L. 2011-412 to General Assembly.

Aug. 2014:

- S.L. 2014-100 amends S.L. 2011-412 language on prison maintenance to authorize DPS to expand private maintenance contracts to additional prisons after reporting to Gov Ops, if DPS determines that savings can be realized and safety maintained.

Detailed timeline: Fall 2014

Sept. 2014:

- Lee Roberts begins serving as Director of OSBM.

Oct. 28, 2014:

- DPS and vendor representatives meet in Charlotte. Governor requests that OSBM conduct an independent analysis and determine the best value for taxpayers.

Early Nov. 2014:

- OSBM Director follows up by meeting with DPS officials.

Dec. 16, 2014:

- DPS expresses concerns about ability to stand up internal maintenance operations by January 1.

Dec. 17, 2014:

- OSBM Director meets with representatives of vendor in Raleigh.

Dec. 18, 2014:

- OSBM Director informs DPS that vendor has been informed of OSBM recommendation to extend for one year and to issue RFP in 2015 for post-2015 maintenance.

Detailed timeline: 2015

Dec. 31, 2014:

- Contract with vendor for Bertie and Maury CIs extended for 12 months (through Dec. 2015).

Apr. 2015:

- Contract with vendor for Tabor CI extended for eight months (through Dec. 2015).

Late June 2015:

- OSBM learns of budget provision barring private maintenance, suspends work on RFP effort and takes no further action.

Sept. 2015:

- Budget provision removed. DPS recommends letting contracts expire anyway; OSBM concurs. Vendor is notified.

Methodology: DPS May 2014 report is incomplete

- RFP and contract do not include benchmarks
- The 2014 DPS report does not meet generally accepted methods for a Benefit Cost Analysis, including guidance provided in Chapter 7 of the [OSBM Manual](#)¹

Flawed framework for analysis

- No analysis of future costs
- Does not capture in timeframe analyzed the latest costs, repair cost caps, types of services covered in contract, or facility expansions

Incomplete sensitivity analysis

- Lacks information on number and severity of security incidents and associated costs
- No sensitivity analysis around key assumptions that could impact the conclusion (i.e., cost psf)

Insufficient information & transparency

- Lacks full explanation of estimation methods, data and sources used, and assumptions made
- Unclear regarding total compensation and fixed and administrative costs
- Does not compare benefits

Deficient analysis of alternatives

- Does not explore other alternatives mentioned in the report:
 - Issuing RFP for competitive bidding for the 3 facilities
 - Privatizing maintenance at all facilities

¹ Available at: <https://ncosbm.s3.amazonaws.com/s3fs-public/documents/files/BudgetManual.pdf>.

Methodology: Public costs difficult to capture

- Difficult to conduct “apples to apples” comparisons
- Several studies² have identified common issues with public-private corrections cost analysis

Public sector cost estimate

- Agency operating budgets do not account for all applicable costs:
 - Overhead
 - Rent
 - Depreciation
 - Insurance
 - Long-term retiree health and pension liabilities
 - Workers' comp
 - Risk transfer

Private sector cost estimate

- Includes all relevant costs that must be recouped for the entity to remain profitable
- Quantifies cost of potential risk being transferred to the private entity
- Accounts for state/local taxes and fees, some of which is ultimately paid back to the state

² See, for example, Harris Kenny and Leonard Gilroy, *The Challenge of Comparing Public and Private Correctional Costs*, December 2013, http://reason.org/files/comparing_correctional_costs.pdf (accessed November 9, 2015).

Methodology: No state standard

- State currently has no standard methodology for comparing public and private costs
- Methodologies exist within the private sector and academia that could be considered, such as the Federal Government's methodology outlined in OMB Circular A-76:

Agency costs based on:

- Direct personnel and operating costs
- Factors for labor and non-pay inflation
- Standard overhead factor of 12%
- Capital equipment and facility costs, including depreciation and insurance
- One-time conversion costs, if moving from private sector

Private costs based on:

- Total cost offered by selected vendor during competitive process
- Adjustment to remove estimated federal taxes to be paid
- Agency contract administration costs (calculated using standard costs)
- One-time conversion costs
- Reduction for gains from disposal of government assets

Decision calculation:

- To ensure that the Government does not change sources for marginal estimated savings, a conversion differential must be met before converting
- The lesser of 10% of agency labor costs or \$10 million is added to the non-incumbent provider's cost before decision

Methodology: Private maintenance saves money

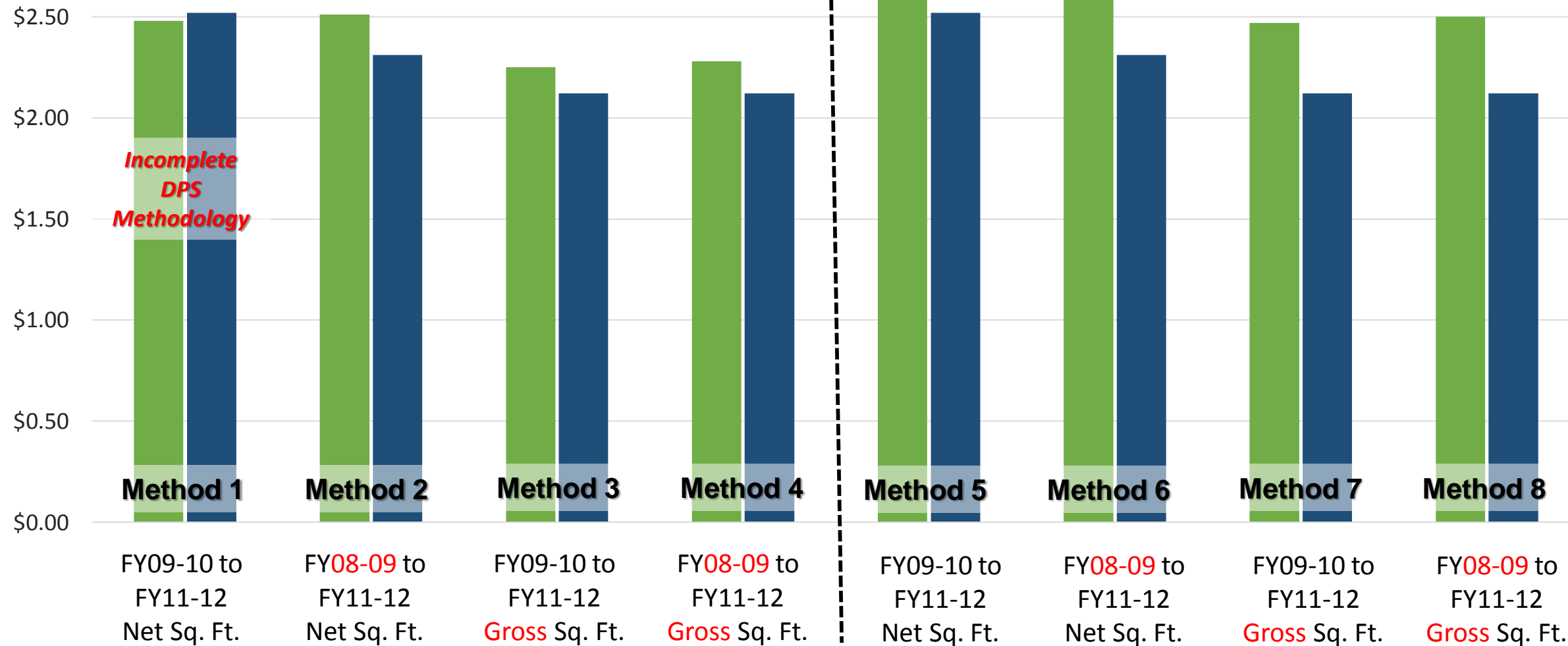
Cost per
Sq. Ft.
per Year
\$3.00

■ Agency Costs

■ Vendor Costs

Unadjusted Figures

Adjusted Figures Using Federal Methodology



Methodology: Summary of issues

Square footage calculations and changes impede apples to apples comparison:

- RFP and vendor bids were based on gross square feet. DPS analysis used net square feet.
- Economies of scale due to expansions were only reflected in the DPS-maintained facilities during the analysis period. DPS-maintained facilities were expanded to house additional inmates during the fiscal years covered in the report, leading to economies of scale. Privately-maintained facilities were expanded during the second contract period, but after the fiscal years used in the DPS analysis. A cost projection would have addressed this issue.

DPS costs require further review and analysis:

- Costs estimated by the Department to maintain the State-maintained facilities changed (decreased) significantly between 2008-09 and 2009-10.
- Analysis did not include most recent year of data (FY 2012-13).
- Agency costs are not fully loaded, and thus not “apples-to-apples.”
- Historical repair costs at privately maintained facilities are based primarily on prior contract that placed more of the cost on DPS versus the contractor.

Other considerations: Security concerns are relevant

DPS security issues are also relevant to the decision-making framework, however:

- Not catalogued
- Impact not quantified
- No comparison to DPS-maintained prisons
- No recommendations in report for changes to contract terms to reflect security concerns
- DPS protected by 30-day termination clause

IX 7. TERMINATION: The Department of Correction may terminate this agreement at any time by **thirty (30) days notice** in writing from the Department to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Department, become its property. If the contract is terminated by the Department as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.

Other considerations: Gov Ops report not required

MAINTENANCE OF PRISONS

SECTION 16C.5. Section 1.1 of S.L. 2011-412, as amended by Section 1.2 of S.L. 2011-412, reads as rewritten:

"SECTION 1.1. The Department of Public Safety shall study the potential benefits and costs of contracting for maintenance services at prison facilities and report its findings to the 2013 Session of the General Assembly. ~~The Department shall not expand private maintenance contracts to additional prison facilities unless authorized by the 2013 Session of the General Assembly.~~ The Department may expand private maintenance contracts to additional prison facilities if it determines that savings can be realized by doing so and that safety can be maintained at those facilities. The Department shall report to the Joint Legislative Commission

S744 [Ratified]

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on Governmental Operations on the anticipated savings and on safety considerations prior to entering any prison maintenance contract under this section."

- Section 16C.5 of SL 2014-100 specifically addresses the potential for expanding private maintenance contracts at additional prison facilities and the associated reporting requirements.
- The provision makes no reference to extension of existing contracts.
- Therefore, no report to the Joint Legislative Commission on Governmental Operations was required.

Concur with NCGA legal and fiscal staff that no report was required

“December 2014: ...No report is made to legislature.”

–***News & Observer*, October 30, 2015**

“We think the (budget law) is silent regarding how DPS is supposed to handle existing private prison maintenance contracts,” wrote Kory Goldsmith, Director of Bill Drafting, in a memo obtained by The News & Observer. “As such, existing contracts can be renewed or extended according to the terms of those contracts and any other applicable laws.”

–***News & Observer*, November 2, 2015**

Conclusion: OSBM stands behind its work

Timeline

- McCrory Administration did not sign contracts → extended for one year given timing and cost factors
- All contracts will expire Dec. 31, 2015

Methodology

- Outsourced maintenance less costly for taxpayers
- Security concerns must be validated → no substitute for analysis
- State should develop standard methodology for private partnerships

Contract extension

- Administration attorneys concur with NCGA legal and fiscal staff that report to Gov Ops was not required before extending contract

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